

**§ 1905.51 Finality for purposes of judicial review.**

Only a decision by the Assistant Secretary shall be deemed final agency action for purposes of judicial review. A decision by a hearing examiner which becomes final for lack of appeal is not deemed final agency action for purposes of 5 U.S.C. 704.

**PART 1906—ADMINISTRATION WITNESSES AND DOCUMENTS IN PRIVATE LITIGATION [RESERVED]**

**PART 1908—CONSULTATION AGREEMENTS**

Sec.

- 1908.1 Purpose and scope.
- 1908.2 Definitions.
- 1908.3 Eligibility and funding.
- 1908.4 Offsite consultation.
- 1908.5 Requests and scheduling for onsite consultation.
- 1908.6 Conduct of a visit.
- 1908.7 Relationship to enforcement.
- 1908.8 Consultant specifications.
- 1908.9 Monitoring and evaluation.
- 1908.10 Cooperative Agreements.
- 1908.11 Exclusions.

AUTHORITY: Secs. 7(c), 8, 21(d), Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 670) and Secretary of Labor's Order No. 6-96 (62 FR 111, January 2, 1997).

SOURCE: 49 FR 25094, June 19, 1984, unless otherwise noted.

**§ 1908.1 Purpose and scope.**

(a) This part contains requirements for Cooperative Agreements between states and the Federal Occupational Safety and Health Administration (OSHA) under sections 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) and section 21(d), the Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998 (which amends the Occupational Safety and Health Act,) under which OSHA will utilize state personnel to provide consultative services to employers. Priority in scheduling such consultation visits must be assigned to requests received from small businesses which are in higher hazard industries or have the most hazardous conditions at issue in the request. Consultation programs operated under the authority of a state

plan approved under section 18 of the Act (and funded under section 23(g), rather than under a Cooperative Agreement) which provide consultative services to private sector employers, must be "at least as effective as" the section 21(d) Cooperative Agreement programs established by this part. The service will be made available at no cost to employers to assist them in establishing effective occupational safety and health programs for providing employment and places of employment which are safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices. The principal assistance will be provided at the employer's worksite, but off-site assistance may also be provided by telephone and correspondence and at locations other than the employer's worksite, such as the consultation project offices. At the worksite, the consultant will, within the scope of the employer's request, evaluate the employer's program for providing employment and a place of employment which is safe and healthful, as well as identify specific hazards in the workplace, and will provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified.

(b) Assistance may include education and training of the employer, the employer's supervisors, and the employer's other employees as needed to make the employer self-sufficient in ensuring safe and healthful work and working conditions. Although onsite consultation will be conducted independent of any OSHA enforcement activity, and the discovery of hazards will not mandate citation or penalties, the employer remains under a statutory obligation to protect employees, and in certain instances will be required to take necessary protective action. Employer correction of hazards identified by the consultant during a comprehensive workplace survey, and implementation of certain core elements of an effective safety and health program and commitment to the completion of others may serve as the basis for employer exemption from certain OSHA

enforcement activities. States entering into Agreements under this part will receive ninety percent Federal reimbursement for allowable costs, and will provide consultation to employers requesting the service, subject to scheduling priorities, available resources, and any other limitations established by the Assistant Secretary as part of the Cooperative Agreement.

(c) States operating approved Plans under section 18 of the Act shall, in accord with section 18(b), establish enforcement policies applicable to the safety and health issues covered by the State Plan which are at least as effective as the enforcement policies established by this part, including a recognition and exemption program.

[49 FR 25094, June 19, 1984, as amended at 65 FR 64290, Oct. 26, 2000]

#### § 1908.2 Definitions.

As used in this part:

*Act* means the Federal Occupational Safety and Health Act of 1970.

*Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health.

*Compliance Officer* means a Federal compliance safety and health officer.

*Consultant* means an employee under a Cooperative Agreement pursuant to this part who provides consultation.

*Consultation* means all activities related to the provision of consultative assistance under this part, including offsite consultation and onsite consultation.

*Cooperative Agreement* means the legal instrument which enables the States to collaborate with OSHA to provide consultation in accord with this part.

*Designee* means the State official designated by the Governor to be responsible for entering into a Cooperative Agreement in accord with this part.

*Education* means planned and organized activity by a consultant to impart information to employers and employees to enable them to establish and maintain employment and a place of employment which is safe and healthful.

*Employee* means an employee of an employer who is employed in the business of that employer which affects interstate commerce.

*Employee representative*, as used in the OSHA consultation program under this part, means the authorized representative of employees at a site where there is a recognized labor organization representing employees.

*Employer* means a person engaged in a business who has employees, but does not include the United States (not including the United States Postal Service,) or any state or political subdivision of a state.

*Hazard correction* means the elimination or control of a workplace hazard in accord with the requirements of applicable Federal or State statutes, regulations or standards.

*Imminent danger* means any conditions or practices in a place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the procedures set forth in § 1908.6(e)(4), (f) (2) and (3), and (g).

*List of Hazards* means a list of all serious hazards that are identified by the consultant and the correction due dates agreed upon by the employer and the consultant. Serious hazards include hazards addressed under section 5(a)(1) of the OSH Act and recordkeeping requirements classified as serious. The List of Hazards will accompany the consultant's written report but is separate from the written report to the employer.

*Offsite consultation* means the provision of consultative assistance on occupational safety and health issues away from an employer's worksite by such means as telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. It may, under limited conditions specified by the Assistant Secretary, include training and education.

*Onsite consultation* means the provision of consultative assistance on an employer's occupational safety and health program and on specific workplace hazards through a visit to an employer's worksite. It includes a written report to the employer on the findings and recommendations resulting from the visit. It may include training and